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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 171

SECRETARY OF AGRICULTURE OF THE UNITED STATES, *Appellant,*
vs.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 172

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT & COMPANY, *Appellants,*
vs.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 282

SECRETARY OF AGRICULTURE OF THE UNITED STATES, *Appellant,*
vs.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 283

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT & COMPANY, *Appellants,*
vs.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

MOTION OF THE INTERVENING RAILROADS TO AFFIRM

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Statutes Cited

Interstate Commerce Act (49 U. S. C.):	
Section 1(6)	10
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Section 14(1)	13
Section 15(1)	10
Section 20(11)	5, 7, 8, 10, 11, 14
United States Code, Title 28:	
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and set aside, or if the said regulations are in all respects lawful that the report and order of the Interstate Commerce Commission should nevertheless be enjoined and set aside on the ground that the Commission's findings of fact and conclusions of law are not supported by adequate findings and substantial evidence.

The Tariff Rules Do Not Limit Railroad Liability

The railroads contended, and the Commission found, that due to the fragile nature of shell eggs there is a substantial amount of damage in shipments of eggs at the time they are offered to the railroads for transportation. The Commission found as a fact what that damage is and the District Court found that the evidence supports the Commission's findings. And further, the District Court points out that the Commission found that "the slightest movement in transportation may cause additional damage to such eggs, which cannot be imputed to carrier negligence, but rather to the inherent nature of the commodity." It is axiomatic that common carriers are not liable for damage to property which exists at the time that property is tendered and received for transportation, and that a common carrier is not liable for damage which results from the inherent nature of the goods. Focused upon this background the problem which confronted the railroads and the Commission was to find a lawful method of removing from a damage claim filed on shell eggs that portion of the damage for which the railroads are not responsible. The method adopted to accomplish this was the publication of regulations in the tariffs providing for tolerances in connection with such damage claims. There is nothing new or novel about this. The Interstate Commerce Commission's report in *National Poultry, Butter & Eggs Assn.* v. *N.Y.C. R.R. Co.*, 52 I.C.C. 47, discloses that tariff tolerance rules in connection with damage claims on shell eggs have been in effect for more than 38 years, and

that the Commission approved such a tolerance rule in the cited case over 35 years ago. Moreover, tolerances for the normal expectancy of shell damage to eggs are used by the United States Department of Agriculture along with the trade in grading eggs, and the Army of the United States when making its inspection of shell eggs grants certain allowances for shell damage. But the appellants contend that such tolerance rules in the railroad tariffs limit the carriers' liability in violation of Section 20(11) of the Interstate Commerce Act, which prohibits limitations of a carrier's liability for damage "caused by it." Both the Commission and the District Court point out that the regulations do not seek to avoid liability for loss caused by the carriers, but rather that they are directed to damage for which the carriers are not responsible, and, therefore, do not conflict with the prohibitions of the Act.

It is urged by the appellants that damage to shell eggs is not caused by the "inherent vice or nature" of the eggs as those terms have been established by the common law, but rather that the damage is caused by the railroads. The fragile nature of eggs is proven by the record before the Commission as is their susceptibility to damage. It was unequivocally stated by the appellants themselves that it is impossible to handle shell eggs without some damage. In order for the damage to be that resulting from an inherent defect, it is not necessary that the damage would equally have occurred if the goods had not been carried at all. This principle is set forth in *Lister* v. *Lancashire & Yorkshire Railroad Co.*, 1 K.B. Div. 878. In the cited case the Railway Company contracted as a common carrier to carry for Lister an engine from his yards to a neighboring town on the railway. The engine was on wheels and fitted with shafts to allow its being drawn by horses. While the Railway Company was drawing the engine with its horses to the railway station, one of the shafts, owing to its being rotten, broke.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

Civil Action No. C 8-53

UTAH POULTRY & FARMERS COOPERATIVE, ET AL., PLAINTIFFS

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, DEFENDANTS

MOTION OF RAILROADS, INTERVENING DEFENDANTS, TO AFFIRM

The intervening railroad defendants, appellees, pursuant to Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States, respectfully move that the judgment of the District Court be affirmed on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

This motion is addressed to both the separate appeal by the Secretary of Agriculture of the United States and the joint appeal by Utah Poultry & Farmers Cooperative, the plaintiff, and Armour and Company and Swift & Company, intervening plaintiffs in the above entitled action. These appeals were allowed May 7, 1954, and were served upon the intervening railroad defendants on May 12, 1954. They are direct appeals from the decision, described by the appellants as a "final judgment" and as a "final order and

decree" dated March 10, 1954, by a specially constituted District Court of three Judges, convened pursuant to 28 U.S.C., Sections 2284 and 2325. That decision denied the prayer of the plaintiffs that an order of the Interstate Commerce Commission be annulled and set aside and that the Commission be directed to strike from its files the tariff filed by the railroads containing provisions in conformity with the Commission's findings. The opinion of the District Court is not yet reported. The order of the Commission is dated February 4, 1952, in I.C.C. Docket No. 30030, which incorporated its report of the same date (284 I.C.C. 377). Final judgment was entered on May 7, 1954.

Resume of the Proceedings

This litigation had its genesis in an investigation inaugurated by the Interstate Commerce Commission on its own motion which was prompted by the phenomenal increase in claims for damage to shell eggs transported by the railroads. Throughout the country they increased from about $110,000. in 1941 to an all time peak of $2,338,442. in 1947. Claim payments in the latter year were relatively greater for damage to shell eggs than to any other commodity. In that portion of the United States north of the Ohio and Potomac Rivers, between the eastern seaboard and the Mississippi River, the claim payments on shell eggs in 1947 were 38.41 percent of the aggregate railroad revenue on this traffic and amounted to $1,444,453. Throughout the entire country during that year the loss and damage claims per car per $100. gross revenue on shipments of shell eggs amounted to $21.20. Claims were filed on 58.6 percent of all carloads of shell eggs delivered at New York, Philadelphia, Baltimore and Boston during 1947. Such claims filed on shipments delivered at New York during that year

amounted to 59.5 percent of the total revenue received on the shell egg traffic to that city.

The railroads contended that due to the fragility of shell eggs there is a normal expectancy of shell damage which exists at the time the eggs are delivered to and received by the railroads for transportation, also that due to the pre-existing shell damage and the inherently fragile nature of shell eggs, rather than to any railroad fault, there is a normal expectancy of damage which occurs during the course of transportation. The railroads submitted that there should be a provision in the tariffs relieving them from this normal expectancy of shell damage for which they are in no way responsible. Tolerance rules in connection with damage claims arising out of the transportation of certain grades of shell eggs by rail had been in effect for more than 37 years, and with the approval of the Commission for more than 34 years without challenge in the courts. All that was contemplated was the establishment of additional tariff provisions to cover all grades of shell eggs.

It is humanly impossible to handle shell eggs without some breakage. Unequivocal and emphatic statements to this effect were made by the witnesses appearing for appellant Secretary of Agriculture of the United States. Excerpts from their testimony are set forth at length in the opinion of the court below. It is sufficient here to direct attention to the following which appears at page 263 of the transcript of the testimony before the Commission presented by the Chief of the Dairy & Poultry Inspection & Grading Bureau, Production & Marketing Bureau, United States Department of Agriculture:

> "Q. You pointed out it was humanly impossible, or at least impractical, to pack a perfect car. You have never seen a perfect car, have you?

"A. No, sir, I haven't.

"Q. Then there is a normal expectancy of shell damage in every car that is loaded, is there not?

"A. Yes, sir."

The Commission found that "eggs are highly perishable and fragile," that "a certain amount of damage occurs to them during the grading and packing operations," and that "the principal cause to which shell damage prior to rail transportation is attributable is the fragility of the commodity." (284 I.C.C. page 389).

With respect to damage occurring during transportation, the following pertinent remarks of the Commission appear at page 402 of its report:

> "Eggs containing checks [shells cracked but membrane unbroken], blind or visible, are to a certain extent in a damaged condition. In other words, the shells on those eggs are defective or cracked. These defects or cracks, unlike breaks or fractures in the bones of animate things, do not heal or knit with the passage of time. Any change in the condition of a defect or crack in an eggshell can result only in its enlargement, a healing or knitting thereof not being possible. *The slightest movement in transportation may cause additional damage to such eggs. Such damage cannot be imputed to the negligence of the carrier but rather to the inherent nature of the commodity.* Even a slight enlargement of the check or defective part could, by a rupture or break in the shell membrane, result in a leaking egg. Such an egg causes additional damage, such as stains, to otherwise sound eggs in the same case." (Italics inserted).

The evidence of record as to the amounts of damaged eggs in consignments at the time they are loaded at point of origin, as well as upon arrival at destination, is epitomized from the evidence of record in the Commission's findings of fact which appear at pages 393-394 of the decision.

The studies, as the Commission's report shows, included carloads of eggs loaded at origin points throughout the entire country. The figures in these findings more than support the tolerances found reasonable by the Commission.

The Commission in its report agreed with the railroads. It held that it would be reasonable to have provisions in the tariffs providing that on eggs placed in packages at rail point of origin no claim shall be allowed where the physical damage to the eggs at destination does not exceed 3 percent of the contents of the packages containing damaged eggs; that on eggs placed in packages at other than rail point of origin no claim shall be allowed where the damage does not exceed 5 percent; and that where damage exceeds 3 and 5 percent, respectively, claims shall be allowed in excess of those percentages, if investigation develops carrier liability. These tolerances do not apply wherever a shipper furnishes a federal or state inspection agency certificate showing point of origin damage to be other than 3 and 5 percent, respectively. In such cases the percentage of actual damage as shown on such certificates, plus 1 percent to cover damage in transit due to the inherent nature of shell eggs, shall be used.

The railroads thereafter published a tariff which is still in effect containing the provisions which the Commission found to be reasonable. After the effective date of this tariff, the appellants filed the present proceedings to set the tariff aside.

The basic question presented is whether the order of the Commission is lawful. The appellants contend that the tariff regulations limit liability for damage caused by the railroads, in violation of Section 20 (11) [1] of the Interstate Commerce Act, and that the order of the Interstate Commerce Commission approving them should be enjoined.

[1] 49 U.S.C.

The horses took fright and upset the engine, which was damaged. The defective condition of the shaft was not known by either the plaintiff or defendant or could not have been discovered by an ordinary examination. The county court judge was of the opinion that the Railway Company was liable and that the rule, that a common carrier is excused from liability for damage if it be caused by the inherent vice of the thing carried, is limited to cases in which the inherent vice itself directly causes the damage without any contributory act done by the carrier as in the case of a vicious animal injuring itself or overripe fruit being damaged by the pressure of its own weight. The appellate court, however, ruled to the contrary stating:

> "The county court judge, in thinking that the rule as to non-liability of a common carrier for damage caused by an inherent defect in the thing carried was limited to cases in which the damage would equally have occurred if the thing had not been carried at all, in my opinion went too far. When once you arrive at the fact that the thing is being carried in the ordinary way, and every precaution has been taken consistent with that mode of carriage, and the accident happens from the unfitness of the thing for that mode of carriage, the carrier is not responsible."

Section 20(11) was originally enacted in 1906. After amendment in 1915, it was interpreted by the Interstate Commerce Commission in *The Cummins Amendment*, 33 I.C.C. 682. In that report the Commission stated:

> "It seems clear that these provisions are, in common with the other matters governed by the amendment, confined to instances of loss, damage, or injury caused by the carriers.
>
> * * * * * * *
>
> "In the interest of thorough understandings and to avoid controversies it is very desirable that these rules

be uniform for all the carriers of the country.'" (691-692)

It also stated:

> "A carrier, after the Cummins amendment goes into effect, may not contract to limit its liability for loss or damage caused by it to the property. There is, however, no inhibition as to the limitation of the liability of a carrier for losses not caused by it or a succeeding carrier to which the property may be delivered. The amendment has expressly reapplied the limitation of the prior act with respect to loss or damage caused by the carriers chargeable therewith. It follows, therefore, that the interpretation applied to the act before it was amended is equally applicable to the amendment in so far as the latter affects the right of a carrier to establish rates conditional upon the shipper's assumption of the entire risk of loss attributable to causes beyond the carrier's control. From this it follows that under the amendment a contract or a tariff may lawfully limit to a reasonable maximum the liability of a carrier for losses which it does not cause." (695).

In *Adams Express Co. v. Croninger*, 226 U. S. 491, this court interpreting the statute in part said:

> "What is the liability imposed upon the carrier? It is a liability to any holder of the bill of lading which the primary carrier is required to issue 'for any loss, damage or injury to such property caused by it,' or by any connecting carrier to whom the goods are delivered. The suggestion that an absolute liability exists for every loss, damage or injury, from any and every cause, would be to make such a carrier an absolute insurer and liable for unavoidable loss or damage though due to uncontrollable forces. That this was the intent of Congress is not conceivable. To give such emphasis to the words, 'any loss or damage,' would be to ignore the qualifying words 'caused by it.' *The liability thus imposed is limited to 'any loss, injury or damage caused by it or*

a succeeding carrier to whom the property may be delivered,' and plainly implies a liability for some default in its common law duty as a common carrier." (506-507) (Italics inserted)

The tolerance rules here under discussion do not limit railroad liability. The decisions in this proceeding by the Interstate Commerce Commission and the District Court to the effect that they are not limitations of liability within the meaning of Section 20(11), are in complete harmony with the long standing construction and interpretation of that section by the Commission and this Court.

The Commission's Order Is Lawful and Is In Fulfillment of Its Statutory Duty

The Interstate Commerce Act, as amended, unquestionably gives the Commission authority to do what it has done. The congressional delegation of authority to the Commission is couched in the broadest terms. Restraints upon its authority, such as those imposed by Section 20(11), are couched in narrow terms. Section 1(6) thereof makes it the duty of common carriers to establish just and reasonable regulations and practices relating to or connected with the receiving, handling, transporting, storage and delivery of property. Section 2 prohibits unjust discrimination. Section 3 prohibits undue preferences. Section 13(2) gives the Commission authority to investigate questions arising under the Act. Section 15(1) authorizes the Commission, after investigation, to prescribe what shall be the just, fair and reasonable regulations and practices. One of the purposes for the creation of the Interstate Commerce Commission was to establish uniformity in connection with transportation so far as it is possible to do so—*New Haven R.R.* v. *Interstate Commerce Commission*, 200 U. S. 361, 391. The tariff regulations under scrutiny here aid in establishing

that uniformity. Thus, in speaking with respect to tariff tolerance rules in connection with shipments of grain, the Interstate Commerce Commission said in *Crouch Grain Co. v. A. T. & S. F. Ry. Co.*, 41 I.C.C. 717, at page 719:

> "While the carriers' liability for losses must be determined, not by the Commission, but by the courts, yet to insure uniformity and to avoid unjust discrimination rules or practices of the kind here under discussion should be shown in the tariffs lawfully filed by the carriers engaged in interstate transportation."

Section 20(11) must be read in conjunction with the other provisions of the Act. It should be so interpreted as to prevent involuntary rebates, discriminations, and other practices which the Act was intended to remedy.

The question actually presented by the present proceedings is whether the tariff regulations are just and reasonable. As the District Court said: "To determine the reasonableness of such a regulation requires the experience and knowledge of transportation conditions possessed by the Commission," and "this is the kind of a question Congress intended the Commission to have the authority to determine." Based upon the voluminous record before it, the Commission passed upon the tariff regulations and determined those which would be just and reasonable. As this Court has held on numerous occasions, whether a tariff rule or regulation is just and reasonable is a question of fact which legally can be decided only by the Commission and, when so decided with substantial support of evidence, will not be disturbed by the courts.

The Commission's Conclusions Are Based Upon Adequate Findings Predicated Upon Substantial Evidence

There is clearly no substance to appellants' contention that the Commission's report and order are not adequately supported by findings and by substantial evidence.

The proceeding before the Commission was the subject of five hearings—two at Chicago, Ill., one at Brooklyn, N. Y., one at Los Angeles, Cal., and one at Washington, D. C. The record consists of 1254[2] typewritten pages of testimony and 60 exhibits, many of them voluminous. Studies covering thousands of cars introduced by witnesses for the Department of Agriculture, on the one hand, and the railroads, on the other, proving conclusively the existence of shell damage at the time shipments of eggs are received for transportation, and during their transportation by rail, due to the inherently fragile nature of eggs, are summarized in detail in the Commission's report—see the Commission's report 284 I. C. C. at pages 393 and 394; also the record before the Commission at pages 105, 287, 296 and 449.

The appellant Secretary of Agriculture contends that in as much as the regulations have national effect, there is a basic defect in the report and order of the Commission because of the attention paid to the damage claims in connection with shipments to eastern destinations. There is no substance in such a contention. The established fact is that damage exists in shipments of eggs offered for rail transportation regardless of the intended destination; that the condition of a damaged egg never gets better, but always gets worse with handling; that there is a worsening during transportation of the condition of the eggs which were in a damaged condition at the time they were received by the railroads, and that those eggs cause damage to others which had been sound. The important consideration is the need for a just, reasonable, non-discriminatory and non-preferential rule for uniform application throughout the United States.

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[2] There was a duplication in the numbering of the transcripts of the testimony taken at Washington on February 8, 1950, and Los Angeles on August 1, 1950.

It is respectfully submitted that the Commission's report sets forth detailed findings of fact, but as this court stated in *Alabama G. S. R. Co. v. United States*, 340 U. S. 216, Section 14(1), of the Interstate Commerce Act does not require the Commission to make detailed findings of fact except in a case where damages are awarded. That exception is not present here.

Hanna Furnace Corp. v. United States, 53 F. Supp. 341, (affirmed 323 U. S. 667) reviews in detail decisions of this Court relating to the question of evidence support required for Commission orders.

The weight to be accorded that evidence is beyond the province of the courts—*Virginian Railway Co. v. United States*, 272 U. S. 658.

Reviewed in the light of the principles established by the courts, it must be concluded that this contention by the appellants is without substance.

Conclusion

The law is clear and well settled that the liability imposed by Section 20(11) of the Interstate Commerce Act is not absolute, but limited. The liability there imposed plainly implies a liability only for defaults in the common law duty of carriers.

The law is equally clear and well settled that the courts will not annul and set aside orders made by the Interstate Commerce Commission in accordance with the statute, upon due process, and with findings substantially supported by the evidence.

Since it is evident that the appeals herein do not present questions which are novel or substantial, it is respectfully submitted that the judgment of the District Court should be affirmed.

Respectfully submitted,

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